

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Pamela J. O'Leary,
Petitioner-Appellant,

v.

Palo Alto Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-74-0303
Parcel No. 160018001024

On June 29, 2010, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant Pamela J. O'Leary was self-represented, participated by telephone, and submitted evidence in support of her petition. The Palo Alto County Board of Review designated County Attorney Peter C. Hart as its legal representative, participated by telephone, and submitted evidence in support of its decision. The Appeal Board now having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

Pamela J. O'Leary, owner of property located at 46640 350th Street, Emmetsburg, Iowa, appeals from the Palo Alto County Board of Review decision reassessing her property. The real estate was classified residential for the January 1, 2009, assessment and valued at \$579,140 representing \$167,200 in land value and \$411,940 in improvement value. O'Leary protested to the Board of Review on the grounds that the property was not equitably assessed under Iowa Code section 441.37(1)(a), and that there had been a downward change in value under Iowa Code section 441.27(c). We note O'Leary's claim of downward change in value in an assessment year is akin to a challenge on market value. *Dedham Co-op Ass'n. v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct.

App. 2006). In response to the protest, the Board of Review reduced the assessed value to a total of \$505,520; representing \$147,200 in land value and \$358,320 in building value.

O'Leary then appealed to this Board on the ground of downward trend in value. As previously noted, this Board will only consider O'Leary's claim that the property is assessed for more than authorized by law. O'Leary seeks \$37,900 in relief from the land value portion of the assessment and values the property as a whole at \$467,620. O'Leary does not challenge the dwelling assessment.

According to the property record card, the subject property is a one-story, frame dwelling built in 1993 with 2860 square feet of living area. The property has a total of 1852 square feet of attached garages. It is in normal condition and has a 2-5 quality grade. The site is 2.86 acres.

At hearing, O'Leary testified that in 1990 she purchased 2.86 acres of agricultural real estate. In 1994, a deed was issued for the south 165 feet of the 2.86 acre parcel to allow the construction of a dwelling. The 165 foot parcel was split off at that time and classified as residential realty. The remaining portion of the parcel was left as agricultural realty. This created two separately assessed parcels. The dwelling parcel area is just less than one acre and the remaining parcel called the grove is just less than two acres. Upon the completion of the construction contract, the assessor combined the two parcels, assessed the subject property as one parcel, and classified the entire 2.86 acres as residential realty. O'Leary believes the dwelling site should be assessed as residential realty and the rest of the site as agricultural realty. While we note that it appears O'Leary's main complaint lies with the classification of the property, in fact, she does not seek to have the property reclassified, but instead to have the value of the land changed.

O'Leary submitted evidence regarding the assessed value of property owned by Ed and Mary Munn and Mollie Veldboom. She wishes to have these properties used as comparables to hers.

This Board notes that these properties are not comparable because they are classified and valued as agricultural realty. Further, O'Leary testified that the grove parcel is not used for agricultural purposes and that the primary use is for a windbreak.

Lois Naig, Palo Alto County Assessor, testified regarding the history of O'Leary's assessment. Naig testified that when the south 165 feet of the total 2.86 acres was split off and a deed filed in 1994, she assessed that portion of the property as residential realty, including the dwelling. The remainder of the parcel retained the agricultural classification and was assessed as a separate parcel. When the construction contract was completed, Naig then combined the two parcels and determined the primary use of the property was as residential realty and valued all of the 2.86 acres of land based on its residential classification.

Naig also testified that she assessed the Munn and Velboom properties as agricultural realty for January 1, 2009. This Board notes that neither property had dwellings on the sites as of the assessment date. Naig submitted comparable sales information that indicates bare agricultural realty intended for residential use is selling from \$15,000 to \$25,000 per acre, which would support the grove area's assessment. Naig testified that assessment guidelines do not allow for a dual classification of a property.

Reviewing all the evidence, we find O'Leary has failed to prove that the subject property is over-assessed. We do find that the best evidence is the evidence and testimony from the County Assessor. Therefore, we find there is insufficient evidence to support the claim that the subject property is over-assessed.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act

apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).


In Iowa, property is to be valued at its actual value. § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sales prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

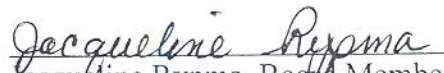
In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Although O'Leary desires a portion of her property to be valued like agricultural realty, it cannot be. First, O'Leary did not challenge the actual classification of the property, and even if she would have, her claim would have failed under the facts presented to us. In order to be classified as agricultural realty, property must be "in good faith used primarily for agricultural purposes" except buildings which are primarily used or intended for human habitation." *Id.* r. 701-71.1(3). "Land . . . shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of

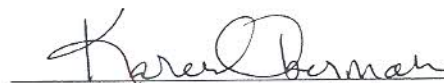
livestock, or horticulture, all for intended profit.” *Id.* O’Leary testified her property was used for a windbreak. Second, even though O’Leary did not challenge the classification of her property, agriculture property and residential property are not assessed in the same manner. Agricultural property is assessed using the productivity and net earning capacity formula; whereas residential property is assessed at market value based on sales comparisons, and/or other factors. Iowa Code §§ 441.21(1)(b) & (e). O’Leary did not provide this Board with persuasive evidence that the current assessed valuation is more than authorized by law. We, therefore, affirm the assessment of the subject property as determined by the Palo Alto County Board of Review as of January 1, 2009.

THE APPEAL BOARD ORDERS that the assessment of the Pamela J. O’Leary property, located at 46640 350th Street, Emmetsburg, Iowa, as of January 1, 2009, set by the Palo Alto County Board of Review, is affirmed.

Dated this 27th day of August, 2010.


Richard Stradley, Presiding Officer


Jacqueline Rypma, Board Member


Karen Oberman, Board Chair

Copies to:

Pamela J. O'Leary
PO Box 555
Emmetsburg, IA 50536
APPELLANT

Peter C. Hart
Palo Alto County Attorney
2105 Main Street, PO Box 74
Emmetsburg, IA 50536
ATTORNEY FOR APPELLEE

Certificate of Service

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on 8/27, 2010

By: ☒ U.S. Mail ☐ FAX
☐ Hand Delivered ☐ Overnight Courier
☐ Certified Mail ☐ Other

Signature: 